

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 28-930536 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5, IC 6-8.1-5-1(b).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on June 28, 1993 in a base tax amount of \$909,324.00. Taxpayer filed a protest to the assessment. Neither Taxpayer nor her attorney appeared for the hearing scheduled for January 11, 2000. A Letter of Findings denying Taxpayer's protest was issued on January 28, 2000. Taxpayer requested and was granted a rehearing. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1(b). Taxpayer admitted possession of thirty (30) grams. The police officers' report and Indiana State Police Laboratory report indicate that marijuana was in Taxpayer's trailer. Taxpayer contends, however, that overnight guests surreptitiously brought the remainder of the marijuana into the house and distributed it to various hidden places in the home. There were times when Taxpayer was not in the room with the guests such as when she was showering, cooking or going to visit her father so the guests had the opportunity to hide the drugs. Two suit cases of drugs were found in the bedroom occupied by the guests. Taxpayer produced an affidavit from the County Deputy Prosecuting Attorney who investigated and prosecuted this case stating that she has "come to the conclusion that (Taxpayer) did not have actual knowledge of " the illegal drugs found in Taxpayer's home. Taxpayer sustained her burden of proving that she did not have possession of most of the illegal drugs found in her house.

Finding

Taxpayer's protest is denied as to thirty (30) grams of marijuana. The remainder of the protest is sustained.

